IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2652 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MODI RAMESHCHANDRA SHANKERLAL - Petitioner(s)

Versus

STATE OF GUJARAT & ORS - Respondent(s)

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Appearance :
MR BP GUPTA for MR YN OZA for Petitioner(s) : 1,
MR AJ DESAI, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/10/2005

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 1-12-1995 passed in SRD/BAKHAP/MASAL No.18/94. By the impugned order, the Deputy Secretary (Appeals) allowed

the revision application filed by the respondent No.3 herein and set aside the order passed by the T.D.O dated 16-5-1994, which is at Annexure-A. The present petitioner seems to have applied on 28-2-1994 for giving him permission for constructing agricultural godown on his land situated in Survey No.208 at Village – Satlasana, Taluka – Kheralu. Initially, he was granted permission by T.D.O for making construction in connection with 7489-41 sq.mts., of land. Subsequently, he has been granted revised permission by the T.D.O by aforesaid order at Annexure-A. The said order was challenged by the respondent No.3 before the Secretary (Appeals), by invoking Section 211 of the Land Revenue Code. The Secretary found that considering the documents on record, the petitioner who was respondent No.2 before the appellate authority has included the land of the present respondent No.3, who was applicant before the appellate authority and found that the present petitioner has not produced any evidence to show title over the land in question. The said revision was allowed by the Deputy Secretary (Appeals), Revenue Department on the ground that a civil dispute is pending between the parties being Special Civil Suit No.70 of 1994. The Secretary, therefore, found that the petitioner could have asked for revised permission in granting revised plan only qua his land and not regarding the land of the respondent No.3 on that ground the Secretary allowed the appeal by setting aside the order passed by T.D.O, which order is impugned in the present petition at the instance of the petitioner.

During the course of hearing, learned advocate

Mr.B.P.Gupta pointed out that the aforesaid Civil Suit is already settled and the present petitioner has become owner of the land by virtue of registered sale deed in that behalf. He has relied upon the order of learned Single Judge (Coram : S.M.Soni, J.) granting interim relief, at the time of admitting the matter. The said order reads as under :

> “Rule returnable on 19-9-95.
>
> The ld.advocate for the petitioner produced one consent term in regular Civil Suit no.70/94. Said suit was between the petitioner and respondents No.3 and others. It appears that the land in dispute owned by the defendant no.1/respondent no.3 herein is now sold to present petitioner/plaintiff there and therefore the question of N.A.being granted on someone else's land does not survive as the petitioner has now become owner of the land which has been allotted to respondent no.3. In view of this fact interim relief in terms of para-9 (c). Consent term as referred above be taken on record.”

Learned AGP submitted that the settlement was not placed before the concerned Secretary when the appeal was heard and, therefore, it cannot be said that the appellate authority has committed any error, which is required to be corrected by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India.

In view of the settlement arrived at between the parties, the order of the Secretary is required to be set aside. In my view, since the aforesaid aspect of settlement of the suit is subsequent to the order of the Secretary (Appeals) and since no material was placed before the Secretary (Appeals), the matter is required to

be sent back to the Secretary for deciding the appeal afresh after hearing the concerned parties. It will be open for the petitioner to place copy of the consent terms before the Secretary (Appeals) and if there is any registered sale deed by virtue of which the petitioner has purchased the land, such sale deed can also be produced before the Secretary (Appeals). The Secretary (Appeals), Revenue Department, thereafter, may decide the appeal afresh and may pass appropriate order in accordance with law, after considering the evidence on record. Matter is accordingly sent back to the Secretary, (Appeals), Revenue Department, State of Gujarat for taking appropriate decision. It will be open for the petitioner as well as for the respondent No.3 to canvass all available points on factual aspect as well as on law point before the Secretary at the time of hearing of the appeal. After receiving the writ of this Court, Secretary (Appeals), Revenue Department, State of Gujarat, may pass appropriate order within a period of six months.

Petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

Writ to be sent to the Secretary (Appeals), Revenue Department, State of Gujarat, forthwith.

(P.B.MAJMUDAR, J.)

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